

ZONING BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 28, 2012

A meeting of the Conway Zoning Board of Adjustment was held on Wednesday, November 28, 2012 at the Conway Town Office in Center Conway, NH, beginning at 7:30 pm. Those present were: Chair, Phyllis Sherman; Vice Chair, John Colbath; Andrew Chalmers; Alternate, Luigi Bartolomeo; Alternate, Martha Tobin; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

APPOINTMENT OF ALTERNATE MEMBERS

Ms. Sherman appointed Ms. Tobin and Mr. Bartolomeo as voting members.

PUBLIC HEARINGS

A public hearing was opened at 7:30 pm to consider a **SPECIAL EXCEPTION** requested by **WAYNE AND DONNA SHEEHAN** in regard to §147.13.3.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 29 Wilder Street, Conway (PID 276-28). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 16, 2012.

Wayne and Donna Sheehan appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Ms. Tobin asked if this was a single-family home with an in-law apartment. Mr. Sheehan stated that when they purchased the property in 2000 it was already there; we are now trying to make it legal. Ms. Sheehan stated there are four parking spaces available.

Ms. Sherman asked for public comment; there was none. Mr. Bartolomeo asked the size of the apartment. Ms. Sheehan stated there are an 11' x 12' bedroom; a 12' x 17' living room/kitchen; and a 5' x 8' bathroom. The Board determined that the apartment met the size requirements. Mr. Chalmers asked if they live in the main house. Mr. Sheehan answered in the affirmative.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the apartment is architecturally compatibility with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Tobin, that sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.3.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 7:38 pm to consider a **SPECIAL EXCEPTION** requested by **ANDRE AND ANNE MARIE VAN COESANT** in regard to §147.13.1.2.4.2 of the Conway Zoning Ordinance **to allow an accessory apartment** at 6 Randall Farm Road, North Conway (PID 232-134). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 16, 2012.

Andre Van Coesant appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Van Coesant stated they are looking to use the upstairs of their home as an accessory apartment. Mr. Van Coesant stated that the living space is 28' x 28'.

Ms. Tobin asked if there would be any changes to the outside of the building. Mr. Van Coesant answered in the negative. Ms. Tobin asked if there is sufficient parking. Mr. Van Coesant stated up to 8 cars can park there. Mr. Bartolomeo asked if they would have their own entrance. Mr. Van Coesant answered in the affirmative and stated that the stairway is already there.

Ms. Sherman public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the apartment is accessory to an owner-occupied single family dwelling.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the apartment is no less than 300 square feet and no greater than 800 square feet.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the apartment is architecturally compatibility with the neighborhood.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Tobin, that sufficient parking is located on site.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the Special Exception pursuant to §147.13.1.2.4.2 of the Town of Conway Zoning Ordinance to allow an accessory apartment be granted. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

A public hearing was opened at 7:45 pm to consider a **VARIANCE** requested by **NORTHWAY BANK** in regard to §147.13.8.13.2 of the Conway Zoning Ordinance **to permit a remote outdoor speaker for a bank drive-up facility and to permit the operation of the driveway-up facility outside the hours of 9:00 am and 5:00 pm** at 3424 White Mountain Highway, North Conway (PID 202-13). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 16, 2012.

Mark Lucy of White Mountain Survey and Engineering; Malcolm McNeill, Attorney, of McNeill, Taylor & Gallo; Eric Reuter, Sound Consultant, of Reuter Associates; Dan Jones, Realtor, of Remax; John Stratton, Senior Vice President, of Northway Bank; and Jim Keenan, consultant to the Bank, of Keenan & Associates appeared before the Board.

Ms. Sherman read the application and the applicable section of the ordinance. Mr. McNeill stated the bank would like to remodel the building and construct a two-bay drive-up window. Mr. McNeill stated that the drive up is within 300 feet of a residential property. Mr. McNeill stated the closet point to the drive up to a boundary line is 74 feet and the actual distance to the residential building itself is 112 feet; the residential building is a duplex. Mr. McNeill stated that the drive up will have an ATM and two drive-up windows with vacuum type canisters and outdoor speakers.

Mr. McNeill stated this type of facility is different from other types of businesses where more needs to be said. Mr. McNeill stated there is 12 inches between the microphone, which is directed into the car, and the car. Mr. McNeill stated the duplex property is surrounded by commercial businesses and the residential property has submitted a letter in favor of this application.

Mr. McNeill stated that the residential owner is the owner of the Moat Smoke House, which submitted a letter in favor of the application. Mr. McNeill stated there is not a great need for verbal communication for a bank. Mr. McNeill stated this was a petitioned ordinance and it did not obtain the usual and customary professional review; there is no explanation for the 300 feet or the hours of operation restrictions. Mr. McNeill stated the bank plans to operate the windows from 8:30 am to 6:00 pm.

Mr. McNeill stated that the real issue is does the sound adversely affect the abutting property; there is already ambient noise from the highway. Mr. McNeill stated there is a sound study and there is no adverse effect based on the sound study's conclusions. Mr. McNeill stated if it does not adversely affect the residential property at 74 feet then it would not at 300 feet. Mr. McNeill stated once you go beyond the hours of 9 am and 6 pm, the distance increases to 600-feet.

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Mr. Lucy gave an overview of the property and stated that the NHDOT has issued a driveway permit allowing the driveway to remain at its present location and allow this change of use. Mr. Lucy stated that this project is subject to site plan review.

Eric Reuter, Sound Consultant, stated that he looked at the existing ambient noise and the noise emission from the speaker and compared the two. Mr. Reuter reviewed his Noise Study dated November 2, 2012 with the Board [copy in the file]. Mr. Bartolomeo asked if the speaker volume could be set higher once it is inspected. Mr. Reuter stated that it is set by a technician and cannot be easily changed. Mr. McNeill stated that they would agree to keep it 10 dBA above ambient. Mr. Irving stated that the town does not have the equipment to regulate such a condition. Mr. Bartolomeo stated if there was a complaint and measured at that time we have it on record.

Mr. Bartolomeo asked if the canopy was shifted further back behind the existing building would it make a difference. Mr. Reuter stated it might, but not a significant difference. Dan Jones stated that his opinion is that of a practical opinion; they have been an abutter to the bank for 20 years and even though the drive-up is on the other side of the building there is so much other noise. Mr. Jones stated that the restaurant next door is very successful and has overflow parking into the late hours of the night. Mr. Jones stated that it is his opinion that this would have zero impact on surrounding property values.

Mr. McNeill read his Brief Statement of Facts dated November 6, 2012 [copies in the file]. Ms. Sherman asked for public comment; there was none. Mr. Bartolomeo asked if the west wall of the canopy were a sound proof wall would it make any difference. Mr. Reuter stated that they looked at that, but it would still be in the line of site and would not make a difference.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the variance will not be contrary to the public interest.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the spirit of the ordinance is observed.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that substantial justice is done.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the values of surrounding properties are not diminished.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

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Ms. Sherman read item 5.a.i. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that no fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.a. ii. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the proposed use is a reasonable use.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Mr. Chalmers, that based on i and ii above literal enforcement of the provisions of the ordinance would result in an unnecessary hardship. Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5.b. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that item 5.b is not applicable to this application.** Motion unanimously carried.

Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the forgoing findings of fact, the variance from §147.13.14 of the Town of Conway Zoning Ordinance to permit a remote outdoor speaker for a bank drive-up facility and to permit the operation of the drive-up facility outside of the hours of 9:00 am to 5:00 pm be granted.

Ms. Sherman asked for Board comment; Mr. Bartolomeo asked if the Board would consider a condition that the speakers could not be set any higher than 66 decibels, 1.5 feet from the box. Mr. Irving stated if the Board wished to consider a condition, then the motion should be withdrawn and restated. Ms. Tobin would not withdraw her second and Mr. Colbath would not withdraw his motion. **Motion carried [without a condition] with Mr. Chalmers voting in the negative and Mr. Colbath, Mr. Bartolomeo, Ms. Tobin and Ms. Sherman voting in the affirmative.**

A public hearing was opened at 8:40 pm to consider a **SPECIAL EXCEPTION** requested by **CHESTER B. AND LYDIA T. LUCY REVOCABLE TRUSTS** in regard to §147.13.14.3.6; §147.13.14.3.10; and §147.13.16.10.4 of the Conway Zoning Ordinance **to permit fill, rip-rap, riverbank stabilization and floodway maintenance** at 3730 West Side Road, North Conway (PID 202-17). Notice was published in the Conway Daily Sun and certified notices were mailed to abutters on Friday, November 16, 2012.

Chet Lucy and Josh McAllister of H.E. Bergeron Engineers appeared before the Board. Ms. Sherman read the application and the applicable section of the ordinance. Mr. Lucy stated over several years they have added rocks to the bank and two years ago he was stopped by the State because a permit was needed. Mr. Lucy stated he received an after the fact permit from the State.

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Mr. McAllister stated there was a portion of the work that was started before permitting was necessary. Mr. Irving stated that this application would be for all the work that has been performed; the State may not have required permits 15 years ago, but the Town did. Mr. Lucy stated that Hurricane Irene didn't affect his rip rap.

Ms. Sherman public comment; there was none.

Ms. Sherman read item 1. **Mr. Colbath made a motion seconded by Mr. Chalmers, that the purpose is consistent with the permitted uses represented in §147.16.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Mr. Chalmers, that the amount of fill is not greater than is necessary to achieve that purpose.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the fill or other materials shall be protected against erosion by riprap, vegetation cover or bulk-heading.** Ms. Sherman asked for Board comment; Mr. Chalmers asked if this had been done. Mr. McAllister answered in the affirmative and stated except for what is currently eroding. **Motion unanimously carried.**

Ms. Sherman read item 4. **Mr. Colbath made a motion, seconded by Ms. Tobin, that all development and substantial improvements shall comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code of Federal Regulations), as amended.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 5. **Mr. Colbath made a motion, seconded by Ms. Tobin, that all fill, new construction, substantial improvements and other development within the floodway shall be prohibited unless the applicant's New Hampshire registered engineer can show the activity would not result in any increase in flood hazard within the Town of Conway.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 6. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Tobin, that based on the foregoing finding of facts, the Special Exception pursuant to §147.13.14.3.6 of the Town of Conway Zoning Ordinance to stabilize eroding river bank as proposed be granted. Motion unanimously carried.

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Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that all development and substantial improvements comply with the minimum standards of the regulations of the National Flood Insurance Program contained in 44 CFR 60.3 and 44 CFR 60.6 (Code Of Federal Regulations), as amended.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the applicant's New Hampshire registered engineer has shown that the activity would not result in any increase in flood hazard within the Town of Conway.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 3. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the granting of the special exception would not violate the general spirit of the ordinance nor would it create a public health or safety hazard.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Tobin, that based on the foregoing finding of facts, the Special Exception pursuant to §147.13.14.3.10 of the Town of Conway Zoning Ordinance to stabilize eroding river bank as proposed be granted. Motion unanimously carried.

Ms. Sherman read item 1. **Mr. Colbath made a motion, seconded by Ms. Tobin, that the shoreline is being eroded by action of the waters and the riprap will protect the shoreline from further erosion without enhancing erosion at another location on the shoreline.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Ms. Sherman read item 2. **Mr. Colbath made a motion, seconded by Ms. Tobin, that there is no better feasible alternative, in keeping with State and Federal Standards for the issuance of development permits in 404 jurisdictional wetlands.** Ms. Sherman asked for Board comment; there was none. **Motion unanimously carried.**

Mr. Colbath made a motion, seconded by Ms. Tobin, that, based on the foregoing finding of fact, the Special Exception pursuant to §147.13.16.10.4 of the Conway Zoning Ordinance to permit fill, rip-rap, riverbank stabilization and floodway maintenance be granted. Motion unanimously carried.

OTHER BUSINESS

Edward and Madeline Brady (PID 232-120) – Motion for Rehearing (File #12-69): Mr. Irving stated that the applicant has withdrawn the motion for rehearing.

James and Linda Sutherby re: Edward and Madeline Brady (PID 232-120) – Motion for Rehearing (File #12-70): Mr. Irving stated that the applicant has withdrawn the motion for rehearing.


Adopted: February 20, 2013 – As Written
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REVIEW AND ACCEPTANCE OF MINUTES

Ms. Tobin made a motion, seconded by Mr. Colbath, to approve the Minutes of October 17, 2012 as written. Motion carried with Mr. Chalmers abstaining from voting.

Meeting adjourned at 8:55 pm.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Recording Secretary